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Attorneys for The Amalgamated Sugar Company

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In re:

HIPWELL, TERRY,

Debtor.

Case No. 96-02095

THE AMALGAMATED SUGAR
COMPANY'S RESPONSE TO
DEBTOR'S OBJECTION
TO CLAIM

The Amalgamated Sugar Company (TASCO) by and through its counsel of record, Penland Munther Boardman, Chartered, responds to Debtor's Objection to Claim in the following.

TASCO filed its Proof of Claim in the sum of \$105,561.09 plus interest on September 24, 1996. TASCO's claim arises out of financing provided by TASCO to Debtor for sugar beet crops in Owyhee and Payette Counties, Idaho, during the 1994 and 1995 growing season. On July 8, 1996, Mr. Hipwell filed an action in the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, Case No. CV 96-03391, alleging various causes of action against TASCO for its refusal to extend additional financing to Mr. Hipwell for the 1996 sugar beet crop. On August 5, 1996, TASCO filed an Answer generally denying the

THE AMALGAMATED SUGAR COMPANY'S
RESPONSE TO DEBTOR'S OBJECTION TO CLAIM - 1

<p> amal/hipwell/resprobj/claim/rcb.wp/120996

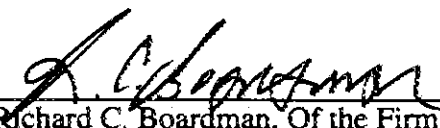
allegations, asserting numerous affirmative defenses, and setting forth a counterclaim in the sum of \$105,561.09 plus interest for the unpaid loan amounts from 1994 and 1995. The state court action between Mr. Hipwell, as plaintiff, and TASCO, as defendant, remains pending. Thereafter, on August 23, 1996, Debtor filed for protection under Chapter 12.

Debtor's objection to TASCO's claim states that "TASCO has no claim that exceeds the claims and setoff amounts subject of litigation in state court" TASCO does not take issue with this statement and agrees that its claim in this bankruptcy proceeding does not exceed the \$105,561.09 plus interest (pre- and postjudgment) and any applicable attorney's fees as asserted in the counterclaim in the state court action. Furthermore, if Plaintiff Hipwell is successful in recovery of damages against TASCO in state court, some or all of TASCO's claim may be subject to setoff. However, these issues remain unresolved.

Additionally, Debtor states in his objection that TASCO's claim should be "disallowed in total." Debtor provides no argument or explanation for the basis of this assertion which appears inconsistent with his previous statement. In response, TASCO asserts that its claim should not be disallowed; that this contested matter should be allowed to proceed in state court, and the parties' interests be litigated in that forum. In that regard, TASCO's counsel has discussed the continued prosecution of the state court action with Debtor's bankruptcy attorney and "state court" attorney. Both have indicated a desire to proceed with the state court action. If that procedure meets with approval of all parties in interest and this Court, TASCO intends to file a Motion to Lift Stay in order to permit pursuit of its counterclaim in the state court action.

DATED this 9th day of December, 1996.

PENLAND MUNTHE BOARDMAN, CHARTERED



Richard C. Boardman, Of the Firm
Attorneys for The Amalgamated Sugar Company

**THE AMALGAMATED SUGAR COMPANY'S
RESPONSE TO DEBTOR'S OBJECTION TO CLAIM - 2**

CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 9th day of December, 1996, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Civil Procedure, to the following persons:

Howard R. Foley
Foley & Freeman, Chartered
77 East Idaho Street
P.O. Box 10
Meridian, ID 83680

Hand Delivery	_____
U.S. Mail	_____
Facsimile	<u> X </u>
Overnight Mail	_____

Office of the U.S. Trustee
304 North Eighth Street, Ste. 347
P.O. Box 110
Boise, ID 83701

Hand Delivery	_____
U.S. Mail	<u> X </u>
Facsimile	_____
Overnight Mail	_____

United States Trustee
Ronald D. Schoen
P.O. Box 216
Payette, ID 83661

Hand Delivery	_____
U.S. Mail	_____
Facsimile	<u> X </u>
Overnight Mail	_____



Richard C. Boardman